



## Decision

**Matter of:** Lewis Jamison Inc. & Associates

**File:** B-252198

**Date:** July 4, 1993

Lewis B. Young for the protester,  
Capt. Gerald P. Kohns, Department of the Army, for the  
agency.  
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Protest of agency failure to solicit a small business concern that requested a copy of a solicitation in July, prior to the agency's October issuance of the solicitation, is denied where protester knew from a Commerce Business Daily synopsis that the agency anticipated a September bid opening date and did not avail itself of every reasonable opportunity to obtain the solicitation before either the anticipated bid opening date or the actual late December bid opening date.

### DECISION

Lewis Jamison Inc. & Associates, a small business concern, protests an award to Phoenix Management Inc. under invitation for bids (IFB) No. DAKF10-92-B-0065 issued by the Department of the Army, Fort Stewart, Georgia, for operation of a motor pool at Fort Stewart and Hunter Army Airfield, Georgia. Lewis Jamison contends that the award was improper because the Army did not send it an IFB.

We deny the protest.

On July 15, 1992, the agency published the synopsis for this procurement in the Commerce Business Daily (CBD). The notice advised readers that the agency anticipated a September 15 bid opening date with performance commencing on January 1, 1993. On July 27, Lewis Jamison wrote the agency requesting a copy of the IFB. The agency received

the request on August 3. Notwithstanding the announced September bid opening date, the agency did not issue the IFB until October 13.<sup>1</sup> On October 15, the agency inadvertently mailed the requested copy of the IFB to the wrong address. The record shows that in the course of compiling the mailing list, the contract specialist did not notice a change of address in the body of the letter and instead used the address in the firm's letterhead.<sup>2</sup> On October 28, the solicitation package was returned to the agency undelivered. Since the problem appeared limited to the protester's post office box,<sup>3</sup> the contract specialist attempted to contact the protester by calling the information number for the protester's city and state, but found no listing for the firm.<sup>4</sup> Lacking a phone number, the agency appears to have concluded that Lewis Jamison had ceased to exist as a viable entity and removed the firm's name and address from the solicitation's mailing list. There is no indication in the record that the agency ever attempted to verify Lewis Jamison's address against the firm's July 27 letter, before removing the Lewis Jamison from the mailing list.

After Lewis Jamison's removal from the mailing list, the agency issued five amendments and twice extended the bid opening from November 12 to December 29. The final amendment (amendment No. 0005)--that established the final bid opening date of December 29--was issued on December 17. Fourteen bidders responded by the December 29 bid opening. On January 21, 1993, the Army awarded the contract to Phoenix Management Inc. This protest followed on February 2, asserting that the Army improperly failed to send Lewis Jamison an IFB.

In its comments on the agency report, the protester states that at some unspecified time before the agency's issuance of amendment No. 0005, it requested and received a copy of

---

<sup>1</sup>On October 13, the agency also posted a copy of the solicitation on the Directorate of Contracting's bulletin board where it apparently remained until bid opening.

<sup>2</sup>The Army points out that the protester did nothing to signal to the agency's clerical personnel that the address in its letterhead was incorrect, such as crossing out the invalid post office box number and substituting its new street address as it did when it used the same stationary to protest to our Office.

<sup>3</sup>The returned envelope was marked "RETURNED TO WRITER, BOX CLOSED--NO ORDER."

<sup>4</sup>In filing its protest with our Office, the firm used its president's unlisted residential phone number.

an unrelated solicitation, and that action resulted in the entry of the protester's correct address in the agency's computer as of December 16, the day before the agency issued amendment No. 0005.<sup>5</sup> Aside from this collateral contact, there is no indication that the protester ever directly contacted, or attempted to contact the agency concerning the whereabouts of the IFB it had requested the previous July.

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1988), requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices. Western Roofing Serv., 70 Comp. Gen. 323 (1991), 91-1 CPD ¶ 242; Holiday Inn-Laurel, B-249673.2, Dec. 22, 1992, 92-2 CPD ¶ 428; Davis Enters., B-249514, Dec. 4, 1992, 92-2 CPD ¶ 389; Professional Ambulance Inc., B-248474, Sept. 1, 1992, 92-2 CPD ¶ 145; Essex Electro Engr's Inc., B-234089.2, Mar. 6, 1990, 90-1 CPD ¶ 253. In pursuit of these goals, a contracting agency has the affirmative obligation to use reasonable methods to publicize its procurement needs and to timely disseminate solicitation documents to those entitled to receive them. Id. In this respect, and as applicable here, FAR § 14.205-1 requires contracting agencies to include on applicable solicitation mailing lists any firm that submits an SF 129 or obtains the solicitation through the contracting agency.<sup>6</sup> In addition, FAR § 19.202-4(c) requires contracting agencies to encourage maximum response to solicitations from small business concerns by sending solicitations to all such concerns on the solicitation mailing list. It is a contracting agency's affirmative obligation to use reasonable methods as required by the FAR for the dissemination of solicitation documents to prospective competitors. U.S. Pollution Control, Inc., B-248910, Oct. 8, 1992, 92-2 CPD ¶ 231; FAR §§ 14.203-1; 14.205; 14.208; 15.403; 15.606(b); 15.611(a).

---

<sup>5</sup>The record does not show whether the agency compiled the mailing list for amendment No. 0005's December 17 issuance before the alleged correction of the protester's address on December 16.

<sup>6</sup>Nothing in the record indicates that the protester has ever submitted a properly executed SF 129.

Concurrent with the agency's obligations in this regard, prospective contractors have the duty to avail themselves of every reasonable opportunity to obtain solicitation documents. Ktech Corp., B-240578, Dec. 3, 1990, 90-2 CPD ¶ 447 (protester only made one inquiry as to solicitation in 2 months following presolicitation conference); Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. Where a prospective contractor fails in this duty, we will not sustain the protest even if the agency also failed in its obligations. See EMSA Ltd. Partnership, B-237846, Mar. 23, 1990, 90-1 CPD ¶ 326. In considering such situations, we look to see whether the agency or the protester had the last clear opportunity to avoid unreasonably precluding the protester from competing. Id.

Here there is no question that the agency failed in its obligations. The Army admits using the wrong address in responding to a timely request for an IFB and thus denying the protester a copy of a solicitation to which it as a small business was clearly entitled. But, it is equally obvious that the protester failed in its duty to avail itself of every reasonable opportunity to obtain the IFB, and that the protester had the last clear opportunity to correct the situation and avoid its own exclusion from the competition.


Lewis Jamison learned of the IFB from the CBD notice. This means the protester knew: the agency's anticipated bid opening date of September 15, 1992; the telephone numbers of two agency employees (the contract specialist and the contracting officer); and three alternative means of requesting bid packages (by phone, by facsimile/FAX, and by mail). Nothing in the record indicates that the protester knew whether the agency had ever received the protester's July 27 letter, and so far as the protester knew, bids would be opened on September 15. Without contacting the agency, the firm could not assure that it would receive the IFB in time to submit a bid.<sup>7</sup> Yet, the protester did not tell the agency that it had not received the solicitation even though it contacted the agency concerning another solicitation. If the protester had phoned the agency's "voice mail" information system at any time after the IFB was issued in October or before bid opening in December, it could have learned that the work it was interested in was "on the street," the work's new solicitation number, and the correct bid opening date.

---

<sup>7</sup>Cf. Custom Envtl. Serv., Inc., B-242900, June 18, 1991, 91-1 CPD ¶ 578 (protester repeatedly contacted contract specialist and received assurances that it would receive notice of new bid opening date).

Since the CBD notified the protester that bids would be opened on September 15 and Lewis Jamison did nothing to contact the agency either before that date or before the December bid opening date, even though fully aware that the agency had not honored its July 27 request for the IFB, we conclude that Lewis Jamison failed to fulfill its obligation to avail itself of every reasonable opportunity to obtain the IFB. See Ktech Corp., supra.

The protest is denied.

  
*for* James F. Hinchman  
General Counsel